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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,152	04/08/2004	David Turner	005127.00211	6673

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EXAMINER

TOMPKINS, ALISSA JILL

ART UNIT PAPER NUMBER

3765

DATE MAILED: 11/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/820,152	Applicant(s) TURNER, DAVID	
	Examiner Alissa J. Tompkins	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-20, 22-33 and 43-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-19, 22-28, 30-33, 43-45 and 47-51 is/are rejected.
- 7) ☒ Claim(s) 5, 20, 29, and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendment filed on 7/10/2006 has been received. Claims 1, 2, 4-20, 22-33, and 43-51 are still pending.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The strip "defining a plurality of apertures extending through the strip to expose portions of the first elastic material" from claims 1, 18, and 28 is not discussed in the applicant's specification. Also, "the perforations being aligned to form parallel rows of the perforations" from claim 28 is not discussed in the specification.

Claim Objections

Claims 22 and 46 are objected to because of the following informalities: Both claims use the word "screenprinted" to describe how the strip is secured to the first surface of the cap. This term was removed from all independent claims and therefore

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should be changed to match the independent claims. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 18 and 28 use the term "bonded" to describe how the elastic strip is secured to the cap. This term was not previously disclosed in the applicant's specification and is therefore considered new matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 6-12, 17-19, 22-25, 28, 30, 31, and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan (U.S. 6,131,202) in view of Wood (U.S. 5,481,760). Yan discloses an article of headwear that is made out of multi-axially stretchable fabric that can stretch in a direction of a circumference of the crown providing an easy fit for the head of the wearer (Column 1, 48-52). The cap is comprised of a crown portion with a plurality of panels made out of an elastic cloth material as well as a visor board covered with a stretchable fabric, which is attached to the crown and expands in response to the stretching of the crown (Column 2, 27-34). The cap also comprises a strip including a plurality of perforations made out of a stretchable foam material (Figure 6, 26) that is covered by fabric and attached to the surface of the crown. Adjacent to the interior surface of the cap is a flap including first and second surfaces (Figure 5, 26 and 28), which is formed of an extension of the first elastic material/crown portion. The strip is located on the first surface of the flap (Figure 4) and the second surface is associated with a sweatband. The first surface of the flap faces away from the head while the second surface faces the head of the wearer (Figure 4-6). The flap is folded and stitched to the inside surface of the crown (Figure 4, 24, 30, 33) forming the headliner of the cap. However, Yan is missing apertures that extend through the strip to expose portions of the first elastic material. Wood discloses a billed cap C having a cap blocker 10. The cap blocker is formed of a single sheet of flexible resilient and moisture repellent material (Column 3, 45). The cap blocker has a plurality of ventilation holes 34 that provide for the evaporation of perspiration from a cap C wearer. The holes also penetrate all the way through the blocker exposing the

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cap material beneath it (Figure 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Wood to modify Yan in order to provide a cap that allows for size adjustment so that wearer's of various head sizes can be accommodated.

Claims 13-16, 26, 27, 32, 33, and 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yan and Woods and further in view of Wang (U.S. 2003/0226193). Wang shows a stretchable cap structure having two L-shaped slits located on the visor board of the cap (Figure 4). The slits allow the end portions of the visor board to extend under a central portion of the visor board. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Wang to modify Yan and Woods in order to provide a cap having slits in the visor giving the visor the ability to conform, expand, and allow a greater movement of freedom for the wearer.

Allowable Subject Matter

Claims 5, 20, 29, and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4-20, 22-33, and 43-51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins
Patent Examiner
Art Unit 3765
November 17, 2006

AJT


GARY L. WELCH
PRIMARY EXAMINER